Missouri Attorney General's Opinions - 1995

Opinion	Date	Topic	Summary
54-95	Mar 6		Letter to The Honorable Joan Bray.
64-95	Apr 13	INVESTMENT OF SCHOOL MONEYS. INVESTMENTS BY SCHOOL DISTRICTS. SCHOOLS. SCHOOL FUNDS.	A school district may not invest surplus funds in an insured money market fund or a mutual fund because such funds are not included among the permissible investments enumerated in Section 165.051, RSMo 1994.
68-95	Apr 24		Letter to The Honorable Jim Howerton.
103-95	Apr 25	CITIES, TOWNS AND VILLAGES. REMOVAL FROM OFFICE. VILLAGES.	The phrase "expel any member" in Section 80.080, RSMo 1994, refers to expelling a member from a meeting and not to removing a member from office.
104-95	Nov 27		Letter to The Honorable May. E. Scheve.
130-95	Sept 11		Letter to The Honorable Don Steen.
147-95	May 2		Letter to the Missouri Ethics Commission.
151-95	Sept 25		Letter to The Honorable Harry Wiggins.
154-95	May 18	INITIATIVES.	Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to a proposed law requiring a trust fund as a condition of issuing any permit, renewing any permit or granting any variance or modification pursuant to Chapter 643, RSMo, to a person for the thermal destruction of materials once contaminated with nerve gas agents or biological agents.
157-95	June 5	INITIATIVES.	Review and approval pursuant to Section 116.334, RSMo 1994, of the sufficiency as to form of a summary statement regarding an initiative petition relating to a proposed law requiring a trust fund as a condition of issuing any permit, renewing any permit or granting any variance or modification pursuant to Chapter 643, RSMo, to a person for the thermal destruction of materials once contaminated with nerve gas agents or biological agents.
158-95	Aug 30		Letter to The Honorable Emanuel Cleaver II.
159-95	July 10		Letter to the Missouri Ethics Commission.

168-95	July 14	INITIATIVES.	Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article X of the Missouri Constitution by adopting one new section, Section 18(e).
169-95	July 21	INITIATIVES.	Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Sections 47(a), 47(b) and 47(c) of Article IV of the Missouri Constitution.
170-95	July 25	INITIATIVES.	Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article X of the Missouri Constitution by adopting one new section, Section 18(e).
172-95	Aug 7	INITIATIVES.	Review and approval pursuant to Section 116.334, RSMo 1994, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the amendment of Article X of the Missouri Constitution by adopting one new section, Section 18(e).
173-95	Aug 8	INITIATIVES.	Review and approval pursuant to Section 116.334, RSMo 1994, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the amendment of Sections 47(a), 47(b) and 47(c) of Article IV of the Missouri Constitution.
174-95	Nov 21		Letter to The Honorable Harold Caskey.
180-95	Oct 30		Letter to The Honorable William P. McKenna.
181-95	Oct 19		Letter to The Honorable Sheila Lumpe.
212-95	Dec 22	INITIATIVES.	Review and rejection pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of sixteen initiative petitions relating to the amendment of certain sections of Chapter 290, RSMo, which sections pertain to the minimum wage rate.
229-95	Dec 27	INITIATIVES.	Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the enactment of a new Section 578.050, RSMo, addressing exhibitions of fighting or wrestling involving animals or birds.

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

March 6, 1995

OPINION LETTER NO. 54-95

FILED
54-95

The Honorable Joan Bray
Representative, District 84
State Capitol Building, Room 412A
Jefferson City, MO 65101

Dear Representative Bray:

This opinion letter is in response to your question asking:

> Can municipalities extend benefit and/or cost of living increases to retirees, and survivors of such retirees, who have terminated prior to the adoption of such increases?

Article III, Section 39 of the Missouri Constitution provides in part:

> **Section 39. Limitation of power of general assembly.** The general assembly shall not have power:
>
> * * *
>
> (3) To grant or to authorize any county or municipal authority to grant any extra compensation, fee or allowance to a public officer, agent, servant or contractor after service has been rendered or a contract has been entered into and performed in whole or in part;
>
> * * *

Article VI, Section 25 of the Missouri Constitution provides in part:

> **Section 25. Limitation on use of credit and grant of public funds by local governments--pensions and retirement plans for employees of certain cities and counties.** No county, city or other political corporation or subdivision of the state shall be authorized to lend its credit or grant public money or property to any private individual, association or corporation except . . . and except that the general assembly may authorize any county, city or other political corporation or subdivision to provide for the retirement or pensioning of its officers and employees and the surviving spouses and children of deceased officers and employees and may also authorize payments from any public funds into a fund or funds for paying benefits upon retirement, disability or death to persons employed and paid out of any public fund for educational services and to their beneficiaries or estates; and except, also, that any county of the first class is authorized to provide for the creation and establishment of death benefits, pension and retirement plans for all its salaried employees, and the surviving spouses and minor children of such deceased employees; and except also, any county, city or political corporation or subdivision may provide for the payment of periodic cost of living increases in pension and retirement benefits paid under this section to its retired officers and employees and spouses of deceased officers and employees, provided such pension and retirement systems will remain actuarially sound. [Emphasis added.]

The provision in Article VI, Section 25, highlighted above by underlining was added by amendment adopted at the general election on November 6, 1984.

The question you pose involves interpreting the 1984 amendment to Article VI, Section 25. In interpreting an amendment to the Constitution, it is proper to look to the previous state of the law and the conditions sought to be remedied by the amendment. Lovins v. City of St. Louis, 84 S.W.2d 127, 128 (Mo banc 1935).

In interpreting the law prior to the 1984 amendment to Article VI, Section 25, the Missouri Supreme Court held that a statute providing cost-of-living adjustments to retired police

officers was unconstitutional as applied to persons already retired on the effective date of the statute. The court stated:

> We hold that § 86.441, [the statute providing cost-of-living adjustments to retired police officers] insofar as it applies to persons already retired on August 13, 1972, [the effective date of the statute] is unconstitutional and payments thereunder to persons already retired on that date are prohibited. In so holding, we need not and do not resolve the question of whether pensions are gratuities or deferred compensation. The parties have not undertaken to brief thoroughly the question of how pensions should be characterized and it is better to leave that issue until such time as it becomes a litigated issue. For purposes of deciding this case, it makes no difference which way they are characterized. If they are gratuities, the proposed adjustments violate Art. VI, § 25. If they are deferred compensation, they violate Art. III, § 39(3). Thus, in either event, the post-retirement payments attempted in this instance are not permissible.

Police Retirement System v. Kansas City, 529 S.W.2d 388, 393 (Mo. 1975). See also, State ex rel. Cleaveland v. Bond, 518 S.W.2d 649 (Mo. 1975), holding that statutes giving retroactive retirement benefits to judges who had ceased holding office prior to the effective date of the statutes are unconstitutional as an attempt to grant public money to private persons or to grant extra compensation after services had been rendered.

However, in Police Retirement System v. Kansas City, supra, the defendants did not attack the cost-of-living adjustments in pensions for members retiring after the effective date of the law. Id. at 390. The court in that case, citing a prior case, stated that when officers retired from the police department, their pensions were determined and fixed in accordance with the formula existing when they retired. Id. at 391. There apparently was no dispute that the pension plan could provide cost-of-living adjustments in pensions for members retiring after the effective date of the law. See also, Missouri Attorney General Opinion Letter No. 84, Lynn, 1981, holding there was no constitutional objection to a city providing cost-of-living increases in the future retirement benefits for policemen and firemen who were employed by the city at the time the ordinance authorizing such cost-of-living increases became effective.

The intent of the 1984 amendment must have been to change the existing law. Prior to the amendment, cost-or-living increases in future pensions were permitted for officers and employees retiring after the effective date of the statute or ordinance providing for such cost-of-living increases. However, cost-of-living increases were prohibited for officers and employees already retired when the statute or ordinance providing such cost-of-living increases became effective. For the 1984 amendment to change the existing law, its intent must have been to allow cost-of-living increases for officers and employees already retired when the statute or ordinance providing such cost-of-living increases became effective.

This conclusion is further supported by the use of the word "retired" in the provision added in 1984. In construing constitutional provisions, courts must assume that words were used purposefully. State ex rel. Upchurch v. Blunt, 810 S.W.2d 515, 516 (Mo. banc 1991). In Police Retirement System v. Kansas City, supra, the plaintiff argued the then-existing Article VI, Section 25 provision authorizing the General Assembly to permit cities to provide for retirement or pensioning of its officers and employees allowed the proposed post-retirement cost-of-living increases in pensions to previously retired policemen. In rejecting such argument, the Court emphasized such provision spoke in terms of officers and employees, not retired officers and employees.

> Art. VI, § 25, of the present Constitution, [constitution prior to the 1984 amendment] contains essentially the same language as appeared in Art. IV, § 47, Mo. Const. 1875, except that a clause expressly authorizing the General Assembly to permit cities to provide for retirement or pensioning of its officers and employees has been added. Plaintiffs argue that the proposed post-retirement cost-of-living increases in pensions to previously retired policemen fall within that clause in Art. VI, § 25 authorizing city pensions. We disagree. The exception in Art. VI, § 25 speaks in terms of officers and employees, not *retired* officers and employees. When the officers in question retired from the police department, their pensions were determined and fixed in accordance with the then established applicable formulas. *Atchison v. Retirement Board of Police Retirement System of Kansas City*, 343 S.W.2d 25, 34 (Mo. 1960). Assuming that such pensions constituted gratuities, additions thereto after their retirement, in

> the absence of a provision in Art. VI, § 25 or elsewhere in the Constitution which would authorize the establishment of pensions or of increases therein for employees already retired, Art. VI, § 25 is applicable and the granting of the proposed cost-of-living adjustments to such persons is prohibited by it.

Id. at 391. The provision added subsequent to this case by the 1984 amendment specifically permits periodic cost-of-living increases in pension and retirements benefits to retired officers and employees and spouses of deceased officers and employees.

For the reasons discussed above, we conclude that as a result of the 1984 amendment to Article VI, Section 25, there is no constitutional prohibition on cost-of-living increases in pension and retirement benefits for officers and employees already retired at the time such increases are enacted and for spouses of deceased officers and employees.

However, it is important to note that the only such increases permitted are "periodic cost of living" increases. Every word in a constitutional provision is presumed to have effect and meaning. Buechner v. Bond, 650 S.W.2d 611, 613 (Mo. banc 1983). The courts ascribe to words the meaning the people understood the words to have when they adopted the provision. Zahner v. City of Perryville, 813 S.W.2d 855, 858 (Mo. banc 1991). The meaning conveyed to the voters is presumed to be the ordinary and usual meaning, which is derived from the dictionary. Id. "Cost-of-living" is defined as "the cost of purchasing those goods and services which are included in an accepted standard level of consumption." Webster's Third New International Dictionary, p. 515.

By restricting the increases permitted by the 1984 amendment to "periodic cost of living increases," the only increases permitted pursuant to such provision are increases that reflect the increase in the cost of purchasing those goods and services which are included in an accepted standard level of consumption. The provision added in 1984 does not permit pension and retirement benefits to be paid to retired officers and employees when no such benefits were authorized at the time of retirement. Furthermore, the provision does not permit pension and retirement benefits to be increased beyond the increase in the cost-of-living.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

INVESTMENT OF SCHOOL MONEYS:
INVESTMENTS BY SCHOOL DISTRICTS:
SCHOOLS:
SCHOOL FUNDS:

A school district may not invest surplus funds in an insured money market fund or a mutual fund because such funds are not included among the permissible investments enumerated in Section 165.051, RSMo 1994.

April 13, 1995

OPINION NO. 64-95

The Honorable Henry Rizzo
State Representative, District 40
State Capitol Building
Jefferson City, MO 65101

and

The Honorable Bill Skaggs
State Representative, District 31
State Capitol Building
Jefferson City, MO 65101

Dear Representative Rizzo and Representative Skaggs:

Each of you has requested an opinion of this office concerning the investment of surplus funds of a school district. The question posed by each of you is:

> May the surplus funds of a school district existing pursuant to Chapter 162 RSMo be invested by the school board in such district in an insured money market or mutual fund that invests solely in (i) bonds of the State of Missouri or of the United States, or of any wholly-owned corporation of the United States, (ii) other short-term obligations of the United States, or (iii) any other instrument permitted under state law for the investment of state funds?

Section 165.051, RSMo 1994, sets forth the permissible investments for surplus funds of a school district. Such section provides:

The Honorable Henry Rizzo and
The Honorable Bill Skaggs

> **165.051. Investment of surplus funds.** – If any school district has money in the teachers', incidental, or debt service fund not needed within a reasonable period of time for the purpose for which the money was received, the school board in the district, if it deems it advisable, may invest the funds in either open time deposits or certificates of deposit secured under the provisions of sections 110.010 and 110.020, RSMo; or in bonds, redeemable at maturity at par, of the state of Missouri, of the United States, or of any wholly owned corporation of the United States; or in other short term obligations of the United States, including any instrument permitted by law for the investment of state moneys. No open time deposits shall be made or bonds purchased to mature beyond the date that the funds are needed for the purpose for which they were received by the school district. No funds shall be invested by any district which does not provide a school term of nine months. Interest accruing from the investment of the surplus funds in such deposits or bonds shall be credited to the fund from which the money was invested. [Emphasis added.]

Section 165.051 enumerates certain permissible investments for surplus funds of a school district and further refers to "any instrument permitted by law for the investment of state moneys." Article IV, Section 15 of the Missouri Constitution, and Section 30.260, RSMo 1994, relate to the investment of state moneys. Article IV, Section 15 authorizes state moneys to be invested as follows:

> **Section 15. State treasurer – duties – custody, investment and deposit of state funds – duties limited – nonstate funds to be in custody and invested by department of revenue – nonstate funds defined.** . . . the state treasurer shall deposit all moneys in the state treasury in banking institutions selected by him and approved by the governor and state auditor, ... The state treasurer shall determine by the exercise of his best judgment the amount of moneys in his custody that are not needed for current expenses and shall place all such moneys on

> time deposit, bearing interest, in banking institutions in this state selected by the state treasurer and approved by the governor and state auditor or in obligations of the United States government or any agency or instrumentality thereof maturing and becoming payable not more than three years from the date of purchase. In addition the treasurer may enter into repurchase agreements maturing and becoming payable within ninety days secured by United States Treasury obligations or obligations of United States government agencies or instrumentalities of any maturity, as provided by law. The investment and deposit of state, United States and nonstate funds shall be subject to such restrictions and requirements as may be prescribed by law. Banking institutions in which state and United States funds are deposited by the state treasurer shall give security satisfactory to the governor, state auditor and state treasurer for the safekeeping and payment of the deposits and interest thereon pursuant to deposit agreements made with the state treasurer pursuant to law. . . . As used in the section, the term "banking institutions" shall include banks, trust companies, savings and loan associations, credit unions, production credit associations authorized by act of the United States Congress, and other financial institutions which are authorized by law to accept funds for deposit or which in the case of production credit associations, issues securities. . . .

Section 30.260 provides in part:

> **30.260. Time and demand deposits — investments — interest rates. —**
>
> * * *
>
> 2. The state treasurer shall place the state moneys which he has determined are not needed for current operations of the state government on time deposit drawing interest in banking institutions in this state selected by him and approved by the governor and the state

> auditor, or place them outright or by repurchase agreement in obligations described in section 15, article IV, Constitution of Missouri, as he in the exercise of his best judgment determines to be in the best overall interest of the people of the state of Missouri. . . . The state treasurer may also place state moneys which he has determined are not needed for current operations of the state government in linked deposits as provided in sections 30.750 to 30.765.
>
> * * *
>
> 4. The state treasurer may subscribe for or purchase outright or by repurchase agreement obligations of the United States government of the character described in subsection 2 of this section which he, in the exercise of his best judgment, believes to be the best for investment of state moneys at the time . . . . The state treasurer may bid on subscriptions for such obligations in accordance with his best judgment. . . .
>
> 5. As used in this chapter, except as more particularly specified in section 30.270, obligations of the United States shall include securities of the United States Treasury, and United States agencies or instrumentalities as described in section 15, article IV, Constitution of Missouri. The word "temporarily" as used in this section shall mean no more than six months.

The information included with your opinion requests contains the following description of the insured money market fund and mutual fund that are the subject of your question.

> The School District has been approached by representatives of certain management investment companies. One company offers a mutual fund comprised entirely of bonds of the State of Missouri. The bonds are insured as to payment of principal and interest and rated "AAA" by Standard & Poor's Corporation and/or Moody's Investors Services. Another company offers a money market fund that invests solely

> in United States government securities, including direct obligations of the U.S. Treasury such as U.S. Treasury bills, notes and bonds, and obligations of U.S. government agencies or instrumentalities such as Federal Home Loan Banks, the Government National Mortgage Association, and the Federal National Mortgage Association.

From the information you provided, your question apparently relates to a school district investing in an insured money market fund or a mutual fund, both of which hold bonds of the State of Missouri or United States government securities, including obligations of United States government agencies or instrumentalities. The school district would not directly own the bonds of the State of Missouri or United States government securities but would own shares of the fund and the fund would be the owner of the bonds or securities. Ownership of shares of such a fund is not authorized by Section 165.051, by Article IV, Section 15, or by Section 30.260.

The primary rule of statutory construction is to ascertain the intent of the legislature by considering the plain and ordinary meaning of the words used in the statute and, where the language of the statute is clear and unambiguous, there is no room for construction. Jones v. Director of Revenue, 832 S.W.2d 516, 517 (Mo. banc 1992). Under the rule that the express mention of one thing implies the exclusion of another, where special powers are expressly conferred or special methods are expressly prescribed for the exercise of the power, other powers and procedures are excluded. Brown v. Morris, 290 S.W.2d 160, 166 (Mo. banc 1956). In the situation about which you are concerned, Section 165.051 (which incorporates certain provisions of Article IV, Section 15 of the Missouri Constitution and certain provisions of Section 30.260) specifies the permissible investments for surplus funds of a school district. Neither an insured money market fund nor a mutual fund as described in your opinion requests is among the enumerated permissible investments. Because the statute enumerating permissible investments for surplus funds of a school district does not include among the permissible investments an insured money market fund or a mutual fund, we conclude a school district may not invest surplus funds in such funds.

The Honorable Henry Rizzo and
The Honorable Bill Skaggs

CONCLUSION

It is the opinion of this office that a school district may not invest surplus funds in an insured money market fund or a mutual fund because such funds are not included among the permissible investments enumerated in Section 165.051, RSMo 1994.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

April 24, 1995

OPINION LETTER NO. 68-95

FILED
68-95

The Honorable Jim Howerton
State Representative, District 120
State Capitol Building
Jefferson City, MO 65101

Dear Representative Howerton:

This opinion letter is in response to your questions concerning the application of the Sunshine Law to the board of directors of a hospital district. Your questions can be summarized as follows:

> 1. Is the hospital district's board of directors required by the Sunshine Law to specifically state before voting to go into closed session the reason(s) for going into closed session?
>
> 2. Is it sufficient to state the reason(s) for going into closed session by reference to the statutory section permitting closure of the meeting (i.e. subsections 1, 2, and 3 of Section 610.021, RSMo 1994) or is it necessary to state the reason(s) by using the language of the statute (i.e. legal actions; purchase of real estate; hiring, firing, disciplining or promoting particular employees)?
>
> 3. Is it legally permissible under the Sunshine Law for the hospital district's board of directors to discuss in closed session the terms of a proposed contract between the district and a group of private physicians relating to the management of the hospital?

Your questions relate to Chapter 610, RSMo, which is commonly referred to as the Missouri Sunshine Law. Section 610.022, RSMo 1994, provides guidance on the procedure for closing a meeting. Such section provides in part:

> **610.022. Closed meetings, procedure and limitation--public records presumed open unless exempt.**--1. Except as set forth in subsection 2 of this section, no meeting or vote may be closed without an affirmative public vote of the majority of a quorum of the public governmental body. The vote of each member of the public governmental body on the question of closing a public meeting or vote and the specific reason for closing that public meeting or vote by reference to a specific section of this act shall be announced publicly at an open meeting of the governmental body and entered into the minutes.
>
> 2. A public governmental body proposing to hold a closed meeting or vote shall give notice of the time, date and place of such closed meeting or vote and the reason for holding it by reference to the specific exception allowed under the provisions of section 610.021. Such notice shall comply with the procedures set forth in section 610.020 for notice of a public meeting.
>
> 3. Any meeting or vote closed pursuant to section 610.021 shall be closed only to the extent necessary for the specific reason announced to justify the closed meeting or vote. Public governmental bodies shall not discuss any business in a closed meeting, record or vote which does not directly relate to the specific reason announced to justify the closed meeting or vote. [Emphasis added.]

* * *

Your first question is answered by the language of Section 610.022. Subsection 2 requires a public governmental body proposing to hold a closed meeting to give notice of "the reason for holding it by reference to the specific exception" allowing the meeting to be closed. Subsection 1 requires "the specific reason for closing that public meeting . . . by reference to a specific section" to be announced publicly at an open meeting. In answer to your question, before going into the closed session, the reason for closing the meeting by reference to the specific exception allowing closure would be set forth in the notice of the proposed meeting

and announced publicly at the open meeting where the members vote on the question of closing the meeting.

Your second question asks if the reason for going into closed session may be stated by reference to the statutory section permitting closure. In describing the requirement that the reason for closing the meeting be stated, subsections 1 and 2 of Section 610.022 refer to "by reference to a specific section of this act" and "by reference to the specific exception allowed under the provisions of section 610.021." Where the language of a statute is clear, courts give effect to the language as written. Kearney Special Road District v. County of Clay, 863 S.W.2d 841, 842 (Mo. banc 1993). Courts are without authority to read into a statute a legislative intent contrary to the intent made evident by the plain language. Id. In the situation about which you are concerned, the applicable statutory provisions allow the reason for going into closed session to be stated by reference to the statutory section permitting closure of the meeting. For example, expressing the reason for closing a meeting by stating the reason as being "subsections 1, 2 and 3 of Section 610.021" would comply with the plain language of the statutory requirement.

Your final question asks if the hospital district's board of directors may discuss in closed session the terms of a proposed contract between the district and a group of private physicians relating to the management of the hospital. We have not been provided enough facts to give a direct answer to your question. Section 610.021, RSMo 1994, in 15 subsections, lists the permissible reasons for closing a meeting. Included among the subsections are the following:

> (1) Legal actions, causes of action or litigation involving a public governmental body and . . . .
>
> (2) Leasing, purchase or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefor. . . .
>
> (3) Hiring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded. . . .

* * *

(8) Welfare cases of identifiable individuals;

(9) Preparation, including any discussions or work product, on behalf of a public governmental body or its representatives for negotiations with employee groups;

* * *

(12) Sealed bids and related documents . . . .

(13) Individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment, ...

(14) Records which are protected from disclosure by law;

(15) Meetings and public records relating to scientific and technological innovations in which the owner has a proprietary interest.

In order for the meeting to be properly closed under the Sunshine Law, the meeting must relate to one or more of the topics listed in the 15 subsections of Section 610.021. Without additional facts, it is not feasible for us to determine whether or not any of the 15 subsections apply to the meeting about which you are concerned.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

CITIES, TOWNS, AND VILLAGES:
REMOVAL FROM OFFICE:
VILLAGES:

to removing a member from office.

The phrase "expel any member" in Section 80.080, RSMo 1994, refers to expelling a member from a meeting and not

April 25, 1995

OPINION NO. 103-95

FILED
103-95

The Honorable John Schneider
State Senator, District 14
State Capitol Building, Room 422
Jefferson City, MO 65101

Dear Senator Schneider:

This opinion is in response to your question asking:

> Does the phrase "expel any member" as it appears in Section 80.080, RSMo, refer to "expulsion from office", or rather "expulsion from a meeting"?

Section 80.080, RSMo 1994, to which your question refers, provides:

> **80.080. Trustees--powers and duties as to members and meetings.**--The board of trustees shall judge of the qualifications, elections and returns of their own members; they may determine rules of their own proceedings, punish any member or other person for disorderly behavior in their presence, and, with the concurrence of four of the trustees, expel any member, but not a second time for the same cause; they shall keep a journal of their proceedings, and, at the desire of any member, shall cause the yeas and nays to be taken and entered on the journal, on any question, resolution or ordinance; and their proceedings shall be public. [Emphasis added.]

Related clauses are to be considered when construing a particular portion of a statute. Marre v. Reed, 775 S.W.2d 951, 953 (Mo. banc 1989). In Section 80.080, the phrase "expel any member" is followed by the phrase "but not a second time for the same cause" and is preceded by a reference to punishing any member for disorderly behavior.

Each word, clause, sentence and section of a statute should be given meaning. State ex rel. Missouri State Board of Registration for Healing Arts v. Southworth, 704 S.W.2d 219, 225 (Mo. banc 1986). If the phrase "expel any member" refers to removing a member from office, the phrase "but not a second time for the same cause" has no meaning. Once a person has been removed from office, he no longer holds that office and thus could not be removed from it a second time. On the other hand, if the phrase "expel any member" refers to removing a member from a meeting, the phrase "but not a second time for the same cause" has meaning. Once a person is removed from a meeting for certain conduct, he could not be removed from a subsequent meeting for the prior conduct. Therefore, we conclude the phrase "expel any member" refers to expelling a member from a meeting and not to removing a member from office.

This conclusion is further supported by the clause preceding "expel any member." The clause refers to punishing any member for disorderly behavior. Removal from a meeting is a sanction consistent with disorderly behavior.

In determining legislative intent, it is proper to consider statutes involving similar or related subject matter when those statutes shed light on the meaning of the statute being construed. State v. Knapp, 843 S.W.2d 345, 347 (Mo. banc 1992). In other statutes relating to removal from office, the legislature has provided safeguards to preclude a majority of a board from removing another board member with whom the majority simply may disagree. See, for example, Section 79.240, RSMo 1994 (relating to removal of elected officers for cause in fourth class cities); Section 77.340, RSMo 1994 (relating to removal of elected officers for cause in certain third class cities); and Section 106.220, RSMo 1994 (relating to removal from office of certain elected local government officials for specified reasons). The absence of similar safeguards in Section 80.080 lends further support to the conclusion that "expel any member" in Section 80.080 refers to expelling a member from a meeting and not to removing a member from office.

Furthermore, in Section 79.240, Section 77.340, and Section 106.220, the language of the statute makes clear that the statute addresses removal from office. Where the legislature intends a statute to address removal from office, the statute enacted by the legislature has clearly stated such intent. The clear intent to address removal from office is not similarly stated in Section 80.080, further supporting the conclusion that Section 80.080 refers to expelling a member from a meeting.

CONCLUSION

It is the opinion of this office that the phrase "expel any member" in Section 80.080, RSMo 1994, refers to expelling a member from a meeting and not to removing a member from office.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

November 27, 1995

OPINION LETTER NO. 104-95

The Honorable May E. Scheve
State Representative, District 98
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Scheve:

This opinion letter is in response to your questions regarding Sections 334.252 and 334.253, RSMo 1994, which address physician referral to physical therapists. You state your questions as follows:

> 1. The statute states that "a physician may not make a referral to an entity for the furnishing of any physical therapy services with whom the physician, physician's employer, or immediate family member of such referring physician has a financial relationship." The question posed is, how is "immediate family" defined? Specifically, is a physician's brother considered "immediate family"?
>
> 2. A physician owns his own medical practice, and this medical practice employs physical therapists to perform physical therapy services. Is this a violation?

Section 334.253 provides:

> 334.253. Physicians prohibited referral to certain physical therapists, when, financial relationship, defined -- exceptions, effective when. -- 1. A physician may not make a referral to an entity for the furnishing of any physical therapy services with whom the physician, physician's employer, or immediate family member of such referring physician has a

financial relationship. A financial relationship exists if the referring physician, the referring physician's employer, or immediate family member:

(1) Has a direct or indirect ownership or investment interest in the entity whether through equity, debt, or other means; or

(2) Receives remuneration from a compensation arrangement from the entity for the referral.

2. The following financial arrangements shall be exempt from disciplinary action under this section:

(1) When the entity with whom the referring physician has an ownership or investment interest is the sole provider of the physical therapy service within a rural area;

(2) When the referring physician owns registered securities issued by a publicly held corporation or publicly traded limited partnership, the shares of which are traded on a national exchange or the over-the-counter market, provided that such referring physician's interest in the publicly held corporation or publicly traded limited partnership is less than five percent and the referring physician does not receive any compensation from such publicly held corporation or publicly traded limited partnership other than as any other owner of the shares of such publicly held corporation or publicly traded limited partnership;

(3) When the referring physician has an interest in real property resulting in a landlord-tenant relationship between the physician and the entity in which the equity interest is held, unless the rent is determined, in whole or in part, by the business volume or profitability of the tenant or is otherwise unrelated to fair market value;

(4) When the indirect ownership in the entity is by means of a bona fide debt incurred in the purchase or acquisition of the entity for a price which does not in any manner reflect the potential source of referrals from the physician with the indirect interest in the entity and the terms of the debt are fair market value, and neither the amount or the terms of the debt in any manner, directly or indirectly, constitutes a form of compensating such physician for the source of his business;

(5) When such physician's employer is a health maintenance organization as defined in subdivision (6) of section 376.960, RSMo, and such health maintenance organization owns or controls other organizations which furnish physical therapy services so long as the referral is to such owned or controlled organization and the physician does not also have a direct or indirect ownership or investment interest in such organization, physical therapy services or the health maintenance organization and the referring physician does not receive any remuneration as the result of the referral;

(6) When such physician's employer is a hospital defined in section 197.020, RSMo, and such hospital owns or controls other organizations which furnish physical therapy services so long as the referral is to such owned or controlled organization and the physician does not also have a direct or indirect ownership or investment interest in such organization, physical therapy service, or the hospital and the referring physician does not receive any remuneration as the result of the referral.

3. The provisions of sections 334.252 and 334.253 shall become effective January 1, 1995. [Emphasis added.]

Section 334.252, providing definitions for certain terms used in Section 334.253, states in pertinent part:

> 334.252. Physicians prohibited referral to certain physical therapists, definitions. -- As used in this section and section 334.253, the following terms mean:
>
> * * *
>
> (2) "Entity", any individual, partnership, firm, corporation, or other business entity which provides, furnishes, or refers physical therapy services;
>
> * * *
>
> (6) "Referral", any referral or prescription, written or verbal, for physical therapy service;
>
> * * *

"All canons of statutory interpretation are subordinate to the requirement that the Court ascertain the intent of the legislature from the language used and give effect to that intent, if possible, and to consider the words used in their plain and ordinary meaning." Butler v. Mitchell-Hugeback, Inc., 895 S.W.2d 15, 19 (Mo. banc 1995). Your first question asks for a definition of "immediate family member" as that phrase is used in Section 334.253. "Words used in statutes must, in the absence of a statutorily prescribed definition, be given their plain ordinary meaning." State ex rel. C.C.G. Management Corp. v. City of Overland, 624 S.W.2d 50, 53 (Mo. App. 1981); accord Matter of Preston, 898 S.W.2d 151, 152 (Mo. App. 1995). Since "immediate family member" is not defined in the statute, we need to determine its ordinary meaning. "The ordinary [meaning] of a word is generally ascertainable by means of a dictionary definition." Angoff v. M & M Management Corporation, 897 S.W.2d 649, 653 (Mo. App. 1995); accord Asbury v. Lombardi, 846 S.W.2d 196, 201 (Mo. banc 1993).

In Small v. Missouri State Highway and Transportation Commission, 815 S.W.2d 495 (Mo. App. 1991), the court determined the meaning of "immediate family" where a question was asked during voir dire of the jury using the term. The judge asked the jury panel, "'are any of you employees or members of your immediate families employees of the State Highway Commission?'" Id. at 496 (emphasis in original). The issue considered was whether a jury panel member had concealed material information when he did not respond to this question but it was later determined that he had a nephew and a third cousin who were

employees of the State Highway Commission. The court adopted the definition of "immediate family" found in Black's Law Dictionary, 750 (6th ed. 1990). " [I]mmediate family is a term 'generally referring to one's parents, wife or husband, children, and brothers and sisters.'" Small, 815 S.W.2d at 497.

Based on the Small case and rules of statutory interpretation, it is the opinion of this office that "immediate family member," as that term is used in Section 334.253, includes a physician's parents, wife or husband, children, and brothers and sisters. With regard to your specific question, a physician's brother would be considered an "immediate family member."

Your second question apparently relates to a physician conducting business as a sole proprietorship and employing physical therapists. Our analysis will be based upon such a situation.[1] Additionally, we presume that your question asks whether a referral by a physician to a physical therapist who the physician employs is prohibited by the statute, rather than asking whether the physician may employ physical therapists. The statute prohibits referrals where there is a financial relationship; it does not prohibit the financial relationship.

The statute states, "A physician may not make a referral to an entity for the furnishing of any physical therapy services with whom the physician . . . has a financial relationship." The first issue for consideration is whether the term "referral" includes directing a patient to an employee, versus directing that patient to a separate business. "Referral" is defined in Section 334.252 as "referral or prescription, written or verbal, for physical therapy service." Thus we must resort to the plain and ordinary meaning of "referral." The word "refer" is defined in various dictionaries as "[t]o direct to a source for help or information" (The American Heritage Dictionary of the English Language, New College Edition, 1981), and "[t]o send or direct (one) to a person, a book or its author for information" (The Oxford English Dictionary, Vol. VIII, 1961). Thus the common meaning of "refer" does not include a requirement that the patient is referred to a separate business.[2] Thus the term

---

[1] Note, however, that the statute covers a financial relationship existing between the referring physician and the entity as well as a financial relationship existing between the referring physician's employer and the entity.

[2] Another provision of Chapter 334, RSMo, supports this conclusion. The last sentence of Section 334.100.2(21), RSMo 1994, indicates that there can be a referral from one physician to another within the same business.

"referral" would include the situation you present in your second question of the physician directing a patient to an employee of the physician.

The second issue for consideration is whether sending a patient to an employee within the same business is a referral to an "entity." "Entity" is defined by Section 334.252 as "any individual, partnership, firm, corporation, or other business entity which provides, furnishes, or refers physical therapy services." The physician who refers a patient to his physical therapist employee is, in fact, referring the patient to a business entity -- his own sole proprietorship.

The last issue for consideration is whether a physician conducting business as a sole proprietorship has a financial relationship with the sole proprietorship. Section 334.253.1(1) states a financial relationship exists if the physician has a direct or indirect ownership in the entity. The physician has an ownership interest in his own sole proprietorship. Therefore, the physician has a "financial relationship" with the sole proprietorship.

Viewing the enactment as a whole, the legislature apparently intended that physicians not benefit financially from referrals to physical therapists. In reading Section 334.253, it is apparent the legislature intended a comprehensive prohibition against physicians profiting from making referrals to physical therapists.

With regard to your second question, it is the opinion of this office that a physician conducting business as a sole proprietorship and employing physical therapists violates Section 334.253 if the physician makes a referral to a physical therapist who the physician employs, unless the physician is otherwise exempt.[3]

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

---

[3] For example, Section 334.253.2(1) provides an exemption for the sole provider of physical therapy service within a rural area.

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

September 11, 1995

OPINION LETTER NO. 130-95

FILED
130-95

The Honorable Don Steen
State Representative, District 115
State Capitol Building, Room 109-G
Jefferson City, Missouri 65101

Dear Representative Steen:

This opinion letter is in response to your question asking whether a city can provide emergency ambulance service to people living outside the city limits. Based on the information you provided, we understand your question relates to a fourth class city providing emergency ambulance service outside the city limits to persons living in an area outside the city limits but near to the city.

A fourth class city "cannot act without specific grants of power" from the legislature. Cape Motor Lodge, Inc. v. City of Cape Girardeau, 706 S.W.2d 208, 212 (Mo. banc 1986); accord State ex rel. Mitchell v. City of Sikeston, 555 S.W.2d 281, 288 (Mo. banc 1977). "[C]ourts have generally followed a strict rule of construction when construing the powers of municipalities." Mitchell, 555 S.W.2d at 288. The power must be (1) granted in express words; (2) necessarily or fairly implied in, or incident to, the powers expressly granted; or (3) essential to the declared objects and purposes of the municipality. Id.; accord City of Raytown v. Danforth, 560 S.W.2d 846, 848 (Mo. banc 1977). "'Any reasonable doubt as to whether a power has been delegated to a municipality is resolved in favor of nondelegation.'" City of Raytown, 560 S.W.2d at 848 (quoting Anderson v. City of Olivette, 518 S.W.2d 34, 39 (Mo. 1975)); accord Taylor v. Dimmitt, 78 S.W.2d 841, 843 (Mo. 1934).

In addition to this rule in determining whether a municipality has authority to exercise municipal or governmental functions, there is an analogous rule regarding a municipality acting outside its boundaries. "Usually, a municipality's jurisdiction ceases at its boundaries," and when municipalities "render[ ] service to consumers outside their corporate boundaries, they perform no municipal function, but depart from the primary objects for which they have existence, and enter a field of private business. Authority for such action . . . should clearly appear." Taylor, 78 S.W.2d at 843; accord Mobil-Teria Catering Company, Inc. v. Spradling, 576 S.W.2d 282, 283 (Mo. banc 1978).

The grant of authority for a fourth class city to operate an ambulance service is found in Section 67.300, RSMo 1994, which in relevant part states:

> **67.300. Counties and cities, towns and villages authorized to operate ambulance service--rates may be set--insurance may be purchased.**--1. Any county, city, town or village may provide a general ambulance service for the purpose of transporting sick or injured persons to a hospital, clinic, sanatorium or other place for treatment of the illness or injury, and for that purpose may
>
> (1) Acquire by gift or purchase one or more motor vehicles suitable for such purpose and may supply and equip the same with such materials and facilities as are necessary for emergency treatment, and may operate, maintain, repair and replace such vehicles, supplies and equipment;
>
> (2) Contract with one or more individuals, municipalities, counties, associations or other organizations for the operation, maintenance and repair of such vehicles and for the furnishing of emergency treatment;
>
> (3) Employ any combination of the methods authorized in subdivisions (1) and (2) of this section.
>
> * * *

This statute, given the rules of construction discussed above, does not grant a city the power to provide ambulance service outside its boundaries.

Section 67.300 can be contrasted with other statutes which explicitly grant a city the authority to provide services outside its boundaries. An example is Section 91.020, RSMo 1994, which allows a city to provide electricity beyond the city limits. Section 91.020 provides:

> **91.020. Cities empowered to sell light and power.**--Any city in this state, which owns and operates any electric light or power plant, may, and is hereby authorized and empowered to, supply electric current from its light or power plant <u>to other municipal corporations</u> for their use and the use of their inhabitants, and also to persons and private corporations for use <u>beyond the corporate limits of such city</u>, and to enter into contracts therefor for such time and upon such terms and under such rules and

> regulations as may be agreed upon by the contracting parties. [Emphasis added.]

Another example is Section 91.050, RSMo 1994, which authorizes a city to provide water beyond the city limits:

> **91.050. Cities owning waterworks may supply other cities.**--Any city in this state which owns and operates a system of waterworks may, and is hereby authorized and empowered to, supply water from its waterworks to other municipal corporations for their use and the use of their inhabitants, and also to persons and private corporations for use beyond the corporate limits of such city, and to enter into contracts therefor, for such time, upon such terms and under such rules and regulations as may be agreed upon by the contracting parties. [Emphasis added.]

Furthermore, Section 250.190, RSMo 1994, provides:

> **250.190. Services outside corporate limits--rates.**--Any such city, town or village or sewer district operating a sewerage system or a combined waterworks and sewerage system under this chapter shall have power to supply water services or sewerage services or both such services to premises situated outside its corporate boundaries and for that purpose to extend and improve its sewerage system or its combined waterworks and sewerage system. Rates charged for sewerage services or water services to premises outside the corporate boundaries may exceed those charged for such services to premises within the corporate limits. [Emphasis added.]

There is no statutory provision comparable to the examples above allowing a fourth class city to provide ambulance service outside its city limits.

However, Sections 70.210, et seq., RSMo, authorize cities to enter into cooperative agreements. Section 70.220, RSMo 1994,[1] states:

> **70.220. Political subdivisions may cooperate with each other, with other states, the United States or private persons.**--Any municipality or political subdivision of this state, as herein defined,[2] may

---

[1] See also Missouri Constitution, Article VI, Section 16.

[2] Section 70.210(3), RSMo 1994, defines "political subdivision" to include cities.

> contract and cooperate with any other municipality or political subdivision, . . . for a common service; provided, that the subject and purposes of any such contract or cooperative action . . . shall be within the scope of the powers of such municipality or political subdivision.

This office has issued numerous prior opinions concerning cooperative agreements pursuant to Sections 70.210, et seq. Enclosed herein are the following prior opinions which address such cooperative agreements: Opinion No. 17-85; Opinion Letter No. 78, McCubbin, 1978; Opinion Letter No. 266, Kiefner, 1974; Opinion No. 270, Martin, 1971; and Opinion No. 213, Cantrell, 1963. These prior opinions may provide guidance in the event a city chooses to consider a cooperative agreement relating to ambulance service.

In summary, it is the opinion of this office that a fourth class city does not have the authority to provide emergency ambulance service outside its city limits to persons living in an area outside the city limits but near to the city unless it has entered into a cooperative agreement as authorized by Sections 70.210, et seq., RSMo.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

NOTE [8/28/95]: House Bills Nos. 484, 199 & 72 <1995> enacted a new subsection 27 of Section 130.011 which, for purposes of Chapter 130, defines "regular session" as follows: "(27) 'Regular session', includes that period beginning on the first Wednesday after the first Monday in January and ending following the first Friday after the second Monday in May". Because of this statutory change, the response to Question 1 of this opinion is no longer valid.

ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P. O. Box 899
(314) 751-3321

May 2, 1995

OPINION LETTER NO. 147-95

Missouri Ethics Commission
Post Office Box 1254
Jefferson City, Missouri 65102

Ladies and Gentlemen:

This opinion letter is in response to your questions asking:

1. Do the provisions of Section 130.032.4, RSMo 1994, prohibit contributions after the first Friday following the second Monday in May (Missouri Constitution, Article III, Section 20(a)) and on or before May 30th?

2. Do the provisions of Section 130.032.4, RSMo 1994, prohibit contributions during veto sessions (Article III, Section 32) and special sessions (Article III, Section 20(b) and Article IV, Section 9) of the General Assembly?

3. Do the provisions of Section 130.032.4, RSMo 1994, prohibit a candidate or officeholder affected thereby from mailing on April 15 an invitation to a fundraiser which will be held on June 15 if the money for the fundraiser will be collected after the regular session of the General Assembly has ended?

Section 130.032.4, RSMo 1994, to which your questions relate, provides:

> 4. **No contribution shall be accepted** by a person serving as a statewide elected official or serving as a member of the general assembly, or by a candidate for any statewide elected office or candidate for state senator or state representative, or by a committee acting on behalf of such an individual, **during any regular session of the general assembly**, except that candidates for a special election to fill a vacancy in any such office may accept contributions to be used in conjunction with that special election during a regular session of the general assembly. [Emphasis added.]

QUESTION NO. 1

Your first question refers to Article III, Section 20(a) of the Missouri Constitution. This section provides in relevant part as follows:

> **Section 20(a). Automatic adjournment -- tabling of bills, when.** The general assembly shall adjourn at midnight on May thirtieth until the first Wednesday after the first Monday of January of the following year, unless it has adjourned prior thereto. All bills in either house remaining on the calendar after 6:00 p.m. on the first Friday following the second Monday in May are tabled. The period between the first Friday following the second Monday in May and May thirtieth shall be devoted to the enrolling, engrossing, and the signing in open session by officers of the respective houses of bills passed prior to 6:00 p.m. on the first Friday following the second Monday in May.

* * *

Your first question basically asks if Section 130.032.4 prohibits contributions during the time period devoted to the enrolling, engrossing, and signing of bills.

Section 130.032.4 provides in relevant part that no contribution shall be accepted during any regular session of the General Assembly. Article III, Section 20(a) provides that the General Assembly shall adjourn at midnight on May thirtieth, unless it has adjourned prior thereto. The May thirtieth date is the last day of the time period allowed for the enrolling, engrossing, and signing of bills. It is a well-settled rule of construction that the context and related clauses of a statute are to be considered when construing a particular portion of a statute. State v. Campbell, 564 S.W.2d 867, 869 (Mo. banc 1978). This rule of construction applies to constitutional provisions as well. State ex rel. Jones v. Atterbury, 300 S.W.2d 806, 810 (Mo. banc 1957). Based on the language of Section 20(a), the time period allowed for the enrolling, engrossing, and signing of bills is before the adjournment of the General Assembly. Therefore, such time period would be included within the phrase "during any regular session of the general assembly."

Furthermore, Article III, Section 20 of the Missouri Constitution provides in part:

> **Section 20. Regular sessions of assembly--quorum--compulsory attendance--public sessions--limitation on power to adjourn.** The general assembly shall meet on the

> first Wednesday after the first Monday in January following each general election. . . .
>
> The general assembly shall reconvene on the first Wednesday after the first Monday of January after adjournment at midnight on May thirtieth of the preceding year. . . .[Emphasis added.]

Section 20 likewise indicates the session adjourns on May thirtieth which is after the time period allowed for the enrolling, engrossing, and signing of bills.

In answer to your first question, it is the opinion of this office that Section 130.032.4 prohibits contributions during the time period allowed for the enrolling, engrossing, and signing of bills which time period is prior to the adjournment of the General Assembly.

QUESTION NO. 2

Your second question asks if Section 130.032.4 prohibits contributions during special sessions and veto sessions. Special sessions are authorized by Article III, Section 20(b) of the Missouri Constitution which provides:

> **Section 20(b). Special session, procedure to convene--limitations--automatic adjournment.** Upon the filing with the secretary of state of a petition stating the purpose for which the session is to be called and signed by three-fourths of the members of the senate and three-fourths of the members of the house of representatives, the president pro tem of the senate and the speaker of the house shall by joint proclamation convene the general assembly in special session. The proclamation shall state specifically each matter contained in the petition on which action is deemed necessary. No appropriation bill shall be considered in a special session convened pursuant to this section if in that year the general assembly has not passed the operating budget in compliance with Section 25 of this article.
>
> The general assembly shall automatically stand adjourned sine die at 6:00 p.m. on the thirtieth calendar day after the date of its convening in special session under this section unless it has adjourned sine die prior thereto.

The Governor is authorized to call special sessions pursuant to Article IV, Section 9 of the Missouri Constitution which provides:

> **Section 9. Governor's messages and recommendations to assembly--call of extra sessions.** The governor shall, at the commencement of each session of the general assembly, at the close of his term of office, and at such other times as he may deem necessary, give to the general assembly information as to the state of the government, and shall recommend to its consideration such measures as he shall deem necessary and expedient. On extraordinary occasions he may convene the general assembly by proclamation, wherein he shall state specifically each matter on which action is deemed necessary. [Emphasis added.]

Veto sessions are authorized by Article III, Section 32(a) of the Missouri Constitution which provides:

> **Section 32. Vetoed bills reconsidered, when.** Every bill presented to the governor and returned with his objections shall stand as reconsidered in the house to which it is returned. If the governor returns any bill with his objections on or after the fifth day before the last day upon which a session of the general assembly may consider bills, the general assembly shall automatically reconvene on the first Wednesday following the second Monday in September for a period not to exceed ten calendar days for the sole purpose of considering bills returned by the governor. . . .

Section 130.032.4 provides that no contribution shall be accepted during any regular session of the General Assembly. The issue for consideration is whether a special session and a veto session are deemed regular sessions of the General Assembly.

The heading on Article III, Section 20, quoted previously in relation to question no. 1, states in part "[r]egular sessions of assembly." The heading on Article III, Section 20(b), quoted above, states in part "[s]pecial session." The heading on Article IV, Section 9, quoted above, states "extra session." While the headings are done by the Revisor of Statutes, headings may be pertinent in demonstrating how a section has been generally read and understood. Fiandaca v. Niehaus, 570 S.W.2d 714, 716 (Mo. App. 1978). The headings indicate that the session of the General Assembly authorized under Article III, Section 20 (first Wednesday after the first Monday in January to May thirtieth) is generally considered the regular session as contrasted with a special session authorized by Article III, Section 20(b) or Article IV, Section 9.

The Missouri Supreme Court has contrasted a regular session with a special session. In State ex rel. Jones v. Atterbury, 300 S.W.2d 806 (Mo. banc 1957), the court considered a special session

to be different than a regular session ("when it is in regular or special session"). Id. at 811. The discussion by the court indicates that the language "any regular session" does not include a special session.

A veto session authorized by Article III, Section 32 commences on the first Wednesday following the second Monday in September for a period not to exceed ten calendar days. This time period is not within the time period of the session authorized under Section 20 (first Wednesday after the first Monday in January to May thirtieth). Furthermore, the veto session is limited to "the sole purpose of considering bills returned by the governor" if "the governor returns any bill with his objections on or after the fifth day before the last day upon which a session of the general assembly may consider bills." Because of the time period when a veto session occurs and its limited purpose, we conclude that a veto session is not "any regular session of the general assembly" as the phrase is used in Section 130.032.4.

In answer to your second question, it is the opinion of this office that Section 130.032.4 does not prohibit contributions during special sessions and veto sessions of the General Assembly.

QUESTION NO. 3

Your third question asks whether mailing on April 15 an invitation to a fundraiser which will be held June 15 if the money for the fundraiser will be collected after the regular session of the General Assembly has ended violates Section 130.032.4. Section 130.032.4 states in relevant part that "[n]o contribution shall be accepted . . . during any regular session of the general assembly" (emphasis added).

Section 130.011(12), RSMo 1994, defines "contribution." Such section provides in part:

> **130.011. Definitions.**--As used in this chapter, unless the context clearly indicates otherwise, the following terms mean:
>
> * * *
>
> (12) **"Contribution"**, a payment, gift, loan, advance, deposit, or donation of money or anything of value for the purpose of supporting or opposing the nomination or election of any candidate for public office or the qualification, passage or defeat of any ballot measure, or for the support of any committee supporting or opposing candidates or ballot measures or for paying

> debts or obligations of any candidate or committee previously incurred for the above purposes. A contribution of anything of value shall be deemed to have a money value equivalent to the fair market value....

In the fact situation you have presented, the money for the fundraiser will be collected after the regular session of the General Assembly has ended. (We assume that no promise to contribute or other form of commitment to contribute will occur during the regular session of the General Assembly and, therefore, we do not address such a situation.) The mailing on April 15 of the invitation is not a "contribution." Subsection 12(d) of Section 130.011 specifically includes the receipts from fundraising events as contributions. There is nothing in the definition of "contribution" in Section 130.011(12) to indicate the mailing on April 15 of the invitation is within the prohibition of Section 130.032.4.

Section 130.032.4 prohibits the contribution from being accepted during the regular session of the General Assembly. "Accepted" is not defined in Chapter 130, RSMo 1994. Under traditional rules of construction, undefined words are given their plain and ordinary meaning as found in the dictionary in order to ascertain the intent of the lawmakers. Asbury v. Lombardi, 846 S.W.2d 196, 201 (Mo. banc 1993). "Accept" is defined as "to take, receive," . . . "to receive with consent (something given or offered)." Webster's Third New International Dictionary (1961) p. 10. The receipt of the money under the facts presented occurs after the regular session of the General Assembly has ended. The contribution is therefore not "accepted" during the regular session of the General Assembly.

In answer to your third question, it is the opinion of this office that Section 130.032.4 does not prohibit the mailing on April 15 of an invitation to a fundraiser which will be held on June 15 if the money for the fundraiser will be collected after the regular session of the General Assembly has ended.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

September 25, 1995

OPINION LETTER NO. 151-95

The Honorable Harry Wiggins
State Senator, District 10
State Capitol Building, Room 423
Jefferson City, MO 65101

Dear Senator Wiggins:

This opinion letter is in response to your question asking whether a city council has the authority to prohibit citizens from videotaping an open meeting.

As you noted in your opinion request, Chapter 610, RSMo, requires the meetings of public governmental bodies, with certain listed exceptions, to be open to the public.

Section 610.011, RSMo 1994, provides:

> **Section 610.011. Liberal construction of law to be public policy.** — 1. It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.028 shall be liberally construed and their exceptions strictly construed to promote this public policy.
>
> 2. Except as otherwise provided by law, all public meetings of public governmental bodies shall be open to the public as set forth in section 610.020, all public records of public governmental bodies shall be open to the public for inspection and copying as set forth in sections 610.023 to 610.026, and all public votes of public governmental bodies shall be recorded as set forth in section 610.015.

Some states specifically provide in their open meetings law for the audio or video recording of open meetings. E.g., Ariz. Rev. Stat. Ann. sec. 38-431.01.E (1985); Cal. Gov't Code sec. 54953.5(a) (West Supp. 1995); Ind. Code Ann. sec. 5-14-1.5-3(a) (Burns 1994); La. Rev. Stat. Ann. sec. 42:8 (West 1990).

Missouri has no provision in Chapter 610, RSMo, or in any other chapter, specifically addressing the issue of whether citizens attending an open meeting of a public governmental body may record the meeting by audiotape or videotape. Nor do we find any Missouri appellate court opinions addressing the issue. However, courts in other states have allowed such audio and video recording of open meetings in the absence of a specific statutory provision.

Two New York courts have held that unobtrusive audiotape recording of public meetings must be allowed. Mitchell v. Board of Education of Garden City Union Free School District, 493 N.Y.S.2d 826 (N.Y. App. Div. 1985); People v. Ystueta, 418 N.Y.S.2d 508 (N.Y. Dist. Ct. 1979). The Ystueta court noted that allowing such recording furthers the policy of New York's open meetings law. Id. at 509. In addition to these New York cases, other states have allowed audiotape recording of open meetings based upon the policy of their respective open meetings laws. Nevens v. City of Chino, 44 Cal. Rptr. 50 (Cal. Dist. Ct. App. 1965)(where machine was silent and unobtrusive)[1]; Belcher v. Mansi, 569 F.Supp. 379 (D. R.I. 1983)(construing policy of Rhode Island's open meetings law and allowing reasonable restrictions "to preserve the orderly conduct of a meeting by controlling noise levels, spatial requirements and the like").

New York has also addressed the issue of whether videotaping open meetings is allowed. In Peloquin v. Arsenault, 616 N.Y.S.2d 716 (N.Y. Sup. Ct. 1994), a village had enacted a blanket ban on video recording of public meetings; the court held the ban to be unreasonable and violative of the open meetings law. Id. at 717. It quoted with approval an opinion on videotaping open meetings issued by the executive director of the state's Committee on Open Government, which stated:

> If the equipment is large, if special lighting is needed, and if it is obtrusive and distracting, I believe that a rule prohibiting its use under those circumstances would be reasonable. However, if advances in technology permit video equipment to be used without special lighting, in a stationary location and in an unobtrusive manner, it is questionable in my view whether a prohibition under those circumstances would be reasonable.

Id.

---

[1] The specific California statute referred to on the previous page was not enacted until 1980.

In Maurice River Township Board of Education v. Maurice River Township Teachers Association, 475 A.2d 59 (N.J. Super. Ct. App. Div. 1984), the board sought to prohibit the association from videotaping its open meetings. The court rejected the board's assertion that the camera would inhibit board members as well as members of the general public from fully participating in the meetings. Id. at 60-61. The court stated:

> Video cameras and recorders have become a commonplace item in our every day life. They are a common security device and confront us at the bank, in stores and even in apartment houses. Exposure to video recording of all of us is a normal occurrence on the streets and in public gatherings such as athletic contests and sporting events where participants and spectators are under constant television surveillance.

Id. at 61. The court held that the association had the right to videotape the board's open meetings. It added:

> However, we are of the opinion that the Board should be given the opportunity in the first instance to formulate reasonable guidelines for the videotaping of its proceedings. Such guidelines should include the number and type of cameras permitted, the positioning of the cameras, the activity and location of the operator, lighting and other items deemed necessary to maintain order and to prevent unnecessary intrusion into the proceedings.

Id.

Based on the policy set forth in Section 610.011, RSMo 1994, and the case law set forth by courts of other states, it is the opinion of this office that a city council does not have the authority to prohibit citizens from videotaping an open meeting in an unobtrusive manner.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

May 18, 1995

OPINION LETTER NO. 154-95

FILED
154-95

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to a proposed law requiring a trust fund as a condition of issuing any permit, renewing any permit or granting any variance or modification pursuant to Chapter 643, RSMo, to a person for the thermal destruction of materials once contaminated with nerve gas agents or biological agents. A copy of the initiative petition and the proposed law which you submitted to this office on May 15, 1995, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

June 5, 1995

OPINION LETTER NO. 157-95

FILED
157-95

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1994. The statement which you have submitted is as follows:

> Shall a law be enacted that the Department of Natural Resources require persons receiving any permit, renewal, variance or modification for thermal destruction of materials once contaminated with nerve gas agents or biological agents establish and pay into a trust fund $5 million per year until it reaches $20 million to remediate any contamination caused by thermal destruction of such nerve gas agents and biological agents, including closing and decontaminating of thermal destruction devices at end of their useful life and for bodily injury and property damage to third parties caused by thermal treatment devices or emissions from such devices?

See our Opinion Letter No. 154-95.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

August 30, 1995

OPINION LETTER NO. 158-95

FILED
158-95

The Honorable Emanuel Cleaver II
Mayor, City of Kansas City
29th Floor, City Hall
414 E. 12th St.
Kansas City, MO 64106-2778

Dear Mayor Cleaver:

You have requested an opinion of this office relating to the Sunshine Law's application to records of the Kansas City Municipal Division of the Circuit Court of Jackson County, Missouri. Your questions relate to the authority of the City Auditor to inspect records of the Municipal Division which are inaccessible to the general public. You further state: "The City Auditor has asked to inspect records of the Municipal Division that reflect the number of cases that have been nolle prossed by the City Prosecutor or otherwise dismissed in favor of the defendant. This request was made as part of an audit of the work of the Municipal Division, the Court Administrator's office, and the City Prosecutor. The City Auditor has been told by the Presiding Judge of the Circuit Court of Jackson County that no records reflecting cases that were nolle prossed or dismissed by the Municipal Division will be made available."

Your questions apparently relate to records which have been closed pursuant to Section 610.105, RSMo 1994. Such section provides:

> **610.105. Effect of nolle pros--dismissal--sentence suspended on record.--**If the person arrested is charged but the case is subsequently nolle prossed, dismissed, or the accused is found not guilty or imposition of sentence is suspended in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records when such case is finally terminated except that the disposition portion of the record may be accessed for purposes of exculpation and except as provided in section 610.120.

Section 610.120, RSMo 1994, lists the persons to whom such closed records may be made available. Section 610.120 provides in part:

> **610.120. Records to be confidential--accessible to whom, purposes--child care, defined.**--1. Records required to be closed shall not be destroyed; they shall be inaccessible to the general public and to all persons other than the defendant except as provided in this section and section 43.507, RSMo. They shall be available to the sentencing advisory commission created in section 558.019, RSMo, for the purpose of studying sentencing practices, and only to courts, law enforcement agencies, child care agencies, department of revenue for driving record purposes, facilities as defined in section 198.006, RSMo, in-home services provider agencies as defined in section 660.250, RSMo, the division of workers' compensation for the purposes of determining eligibility for crime victims' compensation pursuant to sections 595.010 to 595.075, RSMo, and federal agencies for purposes of prosecution, sentencing, parole consideration, criminal justice employment, child care employment, nursing home employment and to federal agencies for such investigative purposes as authorized by law or presidential executive order. . . .

Section 610.120 enumerates the persons to whom records closed under Section 610.105 shall be made available. The City Auditor for the City of Kansas City is not included in any of the listed categories of persons. When a statute directs performance of certain acts by an enumerated class of persons, it implies that persons not included have no authority to perform the act. State ex rel. Tate v. Turner, 789 S.W.2d 240, 241 (Mo. App. 1990). Because the City Auditor is not included in the Section 610.120 list of persons to whom such records may be made available, and no authority to review the records is granted to the City Auditor in any other statutory or constitutional provision, the City Auditor has no authority to review the closed records.

Even though the City Auditor does not have the authority to review these closed records, this does not mean that the Municipal Division is unaudited. In Missouri Attorney General Opinion No. 7-83, a copy of which is enclosed, this office examined the structure of the courts as a result of the "Judicial

Article Amendment" adopted August 3, 1976, and effective January 2, 1979. As stated on page 3 of that opinion:

> These changes have made the circuit courts agencies of the State of Missouri. Accounts of the circuit courts and all divisions of the circuit courts in the custody of officers or employees of the circuit courts, e.g., circuit and division clerks, are subject to audit [by the State Auditor] pursuant to Article IV, Section 13, Missouri Constitution, and Section 29.200, RSMo 1978.

Furthermore, on page 5 of the opinion, this office stated:

> The language employed by the General Assembly in establishing each of the divisions of the circuit courts, including the juvenile, municipal, and probate divisions, shows a clear intent that each of the limited jurisdiction divisions is but a part of the circuit court. Because each such division is vested with elements of the State's judicial power pursuant to Article V, Section 1, Missouri Constitution, we believe the State Auditor's duty to audit extends to the circuit courts and all divisions thereof. [Emphasis added.]

See also, Missouri Attorney General Opinion No. 170-90, a copy of which is enclosed, specifically addressing the Sixteenth Judicial Circuit, which includes the Kansas City Municipal Division, and concluding the State Auditor is authorized to audit the Sixteenth Judicial Circuit.[1]

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

[1] Our conclusion with respect to the City Auditor should not be interpreted as applying to the State Auditor. Although the State Auditor is not listed in Section 610.120, she derives her audit power primarily from the state constitution, Article IV, Section 13, and Chapter 29, RSMo 1994.

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

July 10, 1995

OPINION LETTER NO. 159-95

FILED
159-95

Missouri Ethics Commission
Post Office Box 1254
Jefferson City, MO 65102

Dear Commissioners:

This opinion letter is in response to your question asking:

> Are contributions received by legislators supporting such legislators for election to leadership roles in the General Assembly subject to reporting either pursuant to the campaign finance law contained in Chapter 130, RSMo 1994, or the lobbyist registration and reporting law contained in Section 105.470, RSMo 1994?

We understand that your question relates to potential contributions to a state representative who is a candidate for Speaker of the House of Representatives. Expenses for which such contributions would be used include providing meals for other state representatives, hosting hospitality rooms, and similar expenses.

Section 130.021, RSMo 1994, provides in relevant part:

> 5. The treasurer acting on behalf of any person or organization or group of persons which is a committee by virtue of the definitions of "committee" in section 130.011 and any candidate who is not excluded from forming a committee in accordance with the provisions of section 130.016 shall file a statement of organization with the appropriate officer within twenty days after the person or organization becomes a committee but no later than the date for filing the first report required pursuant to the provisions of section 130.046....

Section 130.041, RSMo 1994, provides in part:

> **130.041. Disclosure reports — who files — when required — contents.** — 1. Except as provided in subsection 5 of section 130.016, the treasurer of every committee, excluding candidate committees when the candidate supported by the committee is not up for election and contributions made by the committee aggregate one thousand dollars or less per election, which is required to file a statement of organization, including a candidate who has elected to serve as the person's own candidate committee, shall file a legibly printed or typed disclosure report of receipts and expenditures for any election for which the committee makes expenditures or contributions or for which the committee receives contributions with the intent to make expenditures or contributions....

The term "candidate" is defined for purposes of Chapter 130, RSMo 1994, by Section 130.011(3), RSMo 1994, as "an individual who seeks nomination or election to public office". The terms "public office" and "office" are defined for purposes of Chapter 130 by Section 130.011(26) as "any state, judicial, county, municipal, school or other district, ward, township, or other political subdivision office or any political party office which is filled by a vote of registered voters" (emphasis added).

The first issue for consideration is whether Speaker of the House of Representatives is a "public office" as defined in Section 130.011(26). Article III, Section 18 of the Missouri Constitution provides in relevant part that "[e]ach house shall appoint its own officers". Pursuant to this authority, the Speaker of the House of Representatives is elected by the members of the House of Representatives. Under Article IV, Section 11(a) of the Missouri Constitution, the Speaker is third in line to succeed the Governor if the Governor dies, is convicted or impeached, or resigns. See also Article IV, Section 11(b). Therefore, we conclude that for purposes of Section 130.011(26), the office of Speaker of the House of Representatives is a state office.

The last phrase of the definition of "public office" contained in Section 130.011(26) is "which is filled by a vote of registered voters". An issue for consideration is whether this phrase restricts the definition of "public office" to only those state offices that are "filled by a vote of registered voters". The last antecedent rule instructs that relative and qualifying words,

phrases or clauses are to be applied to the words or phrase immediately preceding and are not to be construed as extending to or including others more remote. Union Electric Company v. Director of Revenue, 799 S.W.2d 78, 79 (Mo. banc 1990). Thus, we conclude the phrase "filled by a vote of registered voters" does not extend to the more remote phrase "state ... office", and therefore "state ... office" includes the office of Speaker of the House, which is filled by vote of members of the House of Representatives.

Because the office of Speaker of the House is a "state office", the office is a "public office" as defined in Section 130.011(26). An individual who seeks election to Speaker is therefore a "candidate" as defined by Section 130.011(3). A candidate for Speaker who is not excluded from forming a committee in accordance with Section 130.016 is required by Section 130.021.5 to file a statement of organization and to form a committee unless within the exceptions contained in the definition of "committee" in Section 130.011(7). Section 130.041 requires the filing of a disclosure report of receipts and expenditures as provided in such section.

You also inquire whether such contributions are subject to Section 105.470, RSMo 1994, which requires legislative lobbyists to register with the Ethics Commission and to report expenditures made to public officials. Section 105.470.1(3) defines the term "legislative lobbyist" as follows:

> (3) **"Legislative lobbyist"**, any natural person who acts for the purpose of attempting to influence the taking, passage, amendment, delay or defeat of any official action on any bill, resolution, amendment, nomination, appointment, report or any other action or any other matter pending or proposed in a legislative committee in either house of the general assembly, or in any matter which may be the subject of action by the general assembly and in connection with such activity, meets the requirements of any one or more of the following:
>
> (a) Is acting in the ordinary course of employment, which primary purpose is to influence legislation on a regular basis, on behalf of or for the benefit of such person's employer, except that this shall not apply to any person who engages in lobbying on an occasional basis only and not as a regular pattern of conduct; or
>
> (b) Is engaged for pay or for any valuable consideration for the purpose of performing such activity; or

(c) Is designated to act as a lobbyist by any person, business entity, governmental entity, religious organization, nonprofit corporation or association; or

(d) Makes total expenditures of fifty dollars or more during the reporting period for the benefit of a public official in connection with such activity.

A "legislative lobbyist" shall include an attorney at law engaged in activities on behalf of any person unless excluded by any of the following exceptions. A "legislative lobbyist" shall not include any member of the general assembly, an elected state official, or any other person solely due to such person's participation in any of the following activities:

a. Responding to any request for information made by any public official or employee of the legislative branch of government;

b. Preparing or publication of an editorial, a newsletter, newspaper, magazine, radio or television broadcast, or similar news medium, whether print or electronic;

c. Acting within the scope of employment of the legislative branch of government when acting with respect to the general assembly or any member thereof;

d. Testifying as a witness before the general assembly or any committee thereof;

Section 105.470.1(2) defines the term "expenditure" as follows:

(2) **"Expenditure"**, any payment made or charge, expense, cost, debt or bill incurred; any gift, honorarium or item of value bestowed; any price, charge or fee which is waived, forgiven, reduced or indefinitely delayed; any loan or debt which is canceled, reduced or otherwise forgiven; the transfer of any item with a reasonably discernible cost or fair market value from one person to another or provision of any service or granting of any opportunity for which a charge is customarily made, without charge or for a reduced charge; except that the term "expenditure" shall not include the following:

(a) Any item, service or thing of value transferred to any person within the third degree of consanguinity of the transferor

> which is unrelated to any activity of the transferor as a lobbyist;
>
> (b) Informational material such as books, reports, pamphlets, calendars or periodicals informing a public official regarding such person's official duties, or souvenirs or mementos valued at less than ten dollars;
>
> (c) Contributions to the public official's campaign committee or candidate committee which are reported pursuant to the provisions of chapter 130, RSMo;
>
> (d) Any loan made or other credit accommodations granted or other payments made by any person or entity which extends credit or makes loan accommodations or such payments in the regular ordinary scope and course of business, provided that such are extended, made or granted in the ordinary course of such person's or entity's business to persons who are not public officials; [Emphasis added.]

Section 105.470.2 requires legislative lobbyists to register with the Ethics Commission.

A natural person who makes a contribution to a person seeking to be elected Speaker of the House would be acting for purposes of attempting to influence a matter pending in the General Assembly, and if such person's activities were encompassed in the activities described in paragraphs (a) through (d) of Section 105.470.1(3), the person would be a "legislative lobbyist" subject to the registration requirement contained in Section 105.470.2.

Section 105.470.4 provides for semi-annual reporting of expenditures made by lobbyists on behalf of public officials.

Section 105.470.1(2)(c) provides that contributions to a public official's campaign committee or candidate committee which are reported pursuant to Chapter 130, RSMo, are not "expenditures" for purposes of Section 105.470. To determine whether a legislative lobbyist's contribution to a person seeking to be elected Speaker of the House is a reportable "expenditure", it is first necessary to determine the meaning of the terms "campaign committee" and "candidate committee" as used in Section 105.470.1(2)(c). Although such terms are not defined for purposes of Section 105.470, Section 105.470.1(2)(c) also refers to Chapter 130, RSMo. Furthermore, this paragraph originally was enacted as part of Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 262, 86th General Assembly, First Regular Session (1991), which also substantially amended Chapter 130, RSMo. In determining legislative

intent, statutes involving similar or related subject matter should be considered when those statutes shed light on the meaning of the statute being construed. State v. Knapp, 843 S.W.2d 345, 347 (Mo. banc 1992). When the same or similar words are used in different places within the same legislative act and relate to the same or similar subject matter, then the statutes are *in pari materia* and should be construed to achieve a harmonious interpretation of the statutes. Id.. Therefore, we conclude that the terms "campaign committee" and "candidate committee" as used in Section 105.470.1(2)(c) have the same meaning as defined in Chapter 130, specifically Section 130.011(8) and (9).

A contribution made to the "campaign committee" or "candidate committee" of a person seeking to be elected Speaker which is reported pursuant to Chapter 130, RSMo, would fall under the exception to the definition of "expenditure" in Section 105.470.1(2)(c). Therefore, such contribution would not be a reportable expenditure pursuant to Section 105.470.4, since such contribution is reported pursuant to Chapter 130, RSMo.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

July 14, 1995

OPINION LETTER NO. 168-95

FILED
168-95

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article X of the Missouri Constitution by adopting one new section, Section 18(e). A copy of the initiative petition which you submitted to this office on July 6, 1995, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

July 21, 1995

OPINION LETTER NO. 169-95

FILED
169-95

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Sections 47(a), 47(b) and 47(c) of Article IV of the Missouri Constitution. A copy of the initiative petition which you submitted to this office on July 18, 1995, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

July 25, 1995

OPINION LETTER NO. 170-95

FILED
170-95

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article X of the Missouri Constitution by adopting one new section, Section 18(e). A copy of the initiative petition which you submitted to this office on July 17, 1995, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

Jeremiah W. (Jay) Nixon (by DMD)

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

August 7, 1995

OPINION LETTER NO. 172-95

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

FILED
172-95

Dear Secretary Cook:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1994. The statement which you have submitted is as follows:

> Shall Article X of the Missouri Constitution be amended to add a new section 18(e) providing that, in addition to the revenue limit imposed on the general assembly by Section 18(a) of the Missouri Constitution, the general assembly shall not increase taxes or impose new taxes without voter approval?

See our Opinion Letter No. 170-95.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

August 8, 1995

OPINION LETTER NO. 173-95

173-95

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1994. The statement which you have submitted is as follows:

> Shall Article IV Sections 47(a), 47(b) and 47(c) of the Missouri Constitution be amended to extend for ten years the sales and use tax of one-tenth of one percent for use in accordance with state law by the Department of Natural Resources for soil and water conservation and for the acquisition, development, maintenance, and operation of state parks and historic sites and for payments in lieu of real property taxes for land acquired by the state for park purposes?

See our Opinion Letter No. 169-95.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Sincerely,

Jeremiah W. (Jay) Nixon (by DMS)

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

November 21, 1995

OPINION LETTER NO. 174-95

The Honorable Harold Caskey
State Senator, District 31
State Capitol Building
Jefferson City, MO 65101

Dear Senator Caskey:

This opinion letter is in response to your questions asking:

> Does the law allow a township trustee /ex officio treasurer to co-sign all township checks?
>
> a) Is a co-signatory requirement for township checks legal?
>
> b) Can the trustee/ex officio treasurer be held responsible for a co-signatory's failure to sign?

You state: "The township board is interested to find out if they can place additional safeguards on the payment of township funds by requiring a signature in addition to the trustee/ex officio treasurer's signature on township checks."

The procedure for the payment of claims against a township is set forth by statute. Section 65.320, RSMo 1994, providing the procedure for filing a claim against the township, states:

> **65.320. Claims against township--procedure.**--Any person having a claim or account against the township may file such claim or account in the office of the township clerk, to be kept by the said clerk, and laid before the township board at their next meeting;

> provided, however, that any person having a claim against the township may present said claim to the township board himself, or by an agent, at any legally convened meeting of said board; said board shall have the power to determine the legality or illegality of any claim or account against the township, and to reject said claim, or any part thereof, as to them appears just and proper; but in no case shall the township board be authorized to allow any claim, or any part thereof, until the claimant makes out a statement, verified by affidavit to the amount and nature of his claim, setting forth that the same is correct and unpaid, or, if any part thereof has been paid, setting forth how much.

Section 65.340, RSMo 1994, provides:

> **65.340. Claims against township, collection.**--When any claim or account, or any part thereof, shall be allowed by the township board of directors, they shall draw an order upon the township trustee in favor of the claimant for the amount so allowed--said order to be signed by the president of said board, and attested by the township clerk and delivered to said claimant.

Section 65.490, RSMo 1994, provides:

> **65.490. Township funds, how paid out--school district funds, duties of trustees.**--The township trustee and ex officio treasurer shall not pay out any moneys belonging to the township for any purpose whatever, except upon the order of the township board of directors, signed by the chairman of said board and attested by the township clerk; provided, ... He shall receive from the township collector and the county collector or treasurer all road and bridge and other taxes due the township when collected by such officers, and shall receipt for the same, and shall account therefor in like manner as for other moneys in his hands belonging to the township.

These statutes set out the procedure for the payment of a claim against the township. The claim is considered by the township board (Section 65.320). If the claim is allowed by the township board, an order in favor of the claimant is signed by the president/chairman of the board and attested by the township clerk (Section 65.340). The township trustee ex officio treasurer pays out the money to the claimant pursuant to the order signed by the president/chairman of the board and attested by the township clerk (Section 65.490). Section 65.490 specifically prohibits the township trustee ex officio treasurer from paying out township money except upon the order of the township board signed by the president/chairman of the board and attested by the township clerk.

A township only has certain powers. Section 65.270, RSMo 1994, provides:

> **65.270. Corporate power, limitations of.--**No township shall possess any corporate powers, except such as are enumerated or granted by this chapter, or shall be specially given by law, or shall be necessary to the exercise of the powers so enumerated or granted.

In Jensen v. Wilson Tp., Gentry County, 145 S.W.2d 372 (Mo. 1940), the Missouri Supreme Court described the powers of a township as follows:

> A township board functions not as a court of broad jurisdiction but as the agent of the township with limited authority. Consequently, it is even more essential that its authority be exercised in strict compliance with the powers granted to it. Such a board comes under the same rule as a county court. A county court is only the agent of the county with no powers except those granted and limited by law, and like all other agents, it must pursue its authority and act within the scope of its powers. . . .

Id. at 374.

In the situation about which you are concerned, the statutes provide a specific procedure for the payment of claims against the township. The statutory procedure does not include a co-signer on checks issued by the trustee ex officio treasurer. A township only has powers provided to it by law and there is no

power granted to a township to require a co-signer on checks issued by the trustee ex officio treasurer. Therefore, we conclude a township does not have the power to require a co-signer on checks issued by the trustee ex officio treasurer.

Section 65.490 provides that the trustee ex officio treasurer not pay out township money except upon the order of the township board of directors, signed by the president/chairman of the board and attested by the township clerk. Section 65.460, RSMo 1994, requires the trustee ex officio treasurer to be bonded. Such section states in part:

> **65.460. Township trustee, collector--bonds.--**Every person elected or appointed to the office of township trustee and ex officio treasurer, before he enters on the duties of his office, and within ten days after his election or appointment, shall execute and deliver to the township clerk a bond with one or more sureties, to the satisfaction of the township clerk payable to the township board, equal to one-half the largest amount on deposit at any one time during the year preceding his election or appointment of all the township funds, including school moneys, that may come into his hands; and every such bond, when deposited with the township clerk as aforesaid, shall constitute a lien upon all the real estate within the county belonging to such trustee and ex officio treasurer at the time of filing thereof, and shall continue to be a lien until its conditions, together with all costs and charges which may accrue by reason of any prosecution thereon shall be satisfied . . . . provided, the county commission or township board shall annually examine the collector's or trustee's bond as to form and sufficiency of surety and in case of any doubt shall require additional security.

Section 65.470, RSMo 1994, relating to collection on the surety bond, states:

> **65.470. Trustee to receive and pay over moneys--suits on default.--**The township trustee and ex officio treasurer of each township shall receive and pay over all moneys raised therein for defraying township

> expenses; provided, that before entering on the duties of his office he shall execute such bond as is required in section 65.460; and in case of default, it is hereby made the duty of the township clerk to institute suit thereon, in the name of the township, in any court of competent jurisdiction.

The surety bond requirement in Section 65.460 and Section 65.470 provides protection to the township in the event of improper payments by the trustee ex officio treasurer.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

October 30, 1995

OPINION LETTER NO. 180-95

The Honorable William P. McKenna
Senator, District 22
State Capitol Building
Jefferson City, Missouri 65101

Dear Senator McKenna:

This opinion letter is in response to your question concerning the effect on the terms of office of members of the board of directors of a public water supply district when the month for election of directors is changed from June to April. You pose your question as follows:

> Public water supply districts currently conduct board of directors elections in the month of June pursuant to Section 247.180.1, RSMo. The terms of the directors are from June to June. If the public water supply districts change the month of the board of directors election to April, what is the term of the board of directors for the first year after the change and each year thereafter when there is an April election?

We presume your question relates to public water supply districts organized and operating under Sections 247.010 through 247.220, RSMo. Subsection 1 of Section 247.180, RSMo 1994, allows elections for the board of directors of public water supply districts to be held in April or June. Such subsection provides:

> **247.180. Elections in district, when - conducted by mail, when, procedure.** - 1. Regular elections shall be held annually on the first Tuesday after the first Monday in June, or the election may be held in April at the same time as regular school elections.

* * *

Section 247.060, RSMo 1994, describes the board of directors of a public water supply district and sets the terms of the directors. Section 247.060 provides in relevant part:

> **247.060. Board of directors - powers - qualifications - appointment - terms - vacancies, how filled - elections held, when, procedure.** - 1. . . . [The board of directors] shall be composed of five members, ... Except as provided in subsection 2 of this section, the term of office of a member of the board shall be three years. . . .
>
> 2. The initial members of the board shall be appointed by the circuit court and one shall serve until the immediately following first Tuesday after the first Monday in June, two shall serve until the first Tuesday after the first Monday in June on the second year following their appointment and the remaining appointees shall serve until the first Tuesday after the first Monday in June on the third year following their appointment. On the expiration of such terms and on the expiration of any subsequent term, elections shall be held as otherwise provided by law, and <u>such elections may be held in April pursuant to section 247.180.</u> [Emphasis added.]

Section 247.060.2 recognizes that elections for members of the board of directors may be held in April.

Section 247.070, RSMo 1994, provides for the board to meet and organize no later than thirty (30) days after the election of the board. Such section provides in relevant part:

> **247.070. Organization of board, when.** - Within thirty days after appointment or election of the board, or on the date of the first regular meeting after appointment or election of the board, whichever is earlier, the board shall meet and organize, selecting one of its number president and one vice president. . . . The president and vice president shall serve for one year and until their successors are selected and qualified.

For there to be compliance with Section 247.070, a director could

not be elected at the April election and his taking of office delayed until June.

Also relevant to your inquiry is Article VII, Section 12 of the Missouri Constitution. Such section provides:

> **Section 12. Tenure of office.** Except as provided in this constitution, and subject to the right of resignation, all officers shall hold office for the term thereof, and until their successors are duly elected or appointed and qualified.

An issue for consideration is whether this constitutional provision precludes a director who was elected in June from having his term expire approximately two months prior to when his term would have expired except for the change in the election date from June to April. The Missouri Supreme Court interpreted this constitutional provision in State ex rel. Voss v. Davis, 418 S.W.2d 163 (Mo. 1967) and concluded that the terms of incumbent city council members could be shortened from four years to two years by charter amendment without violating Article VII, Section 12. In interpreting Article VII, Section 12, the Court stated:

> In our opinion, respondents misconstrue Sec. 12 when they say its purpose is to bar the shortening of the term of an officer. We believe the intent and purpose of Sec. 12 is to guarantee a continuity of tenure, to make sure that the public, for whose benefit the office has been created, will at all times have an incumbent to perform the duties thereof, to insure that the public interest will not suffer from the neglect of duties which would result for want of an incumbent and that public business will not be interrupted. . . .
>
> Sec. 12 does not read "all officers shall hold office for the length of the term as it existed when they were elected", as the council in effect contends. The words "for the term thereof" in Sec. 12 mean for the term of the office, whatever it may be. When so read and taken along with the final clause "and until their successors are duly elected or appointed and qualified", which is an

> integral part of the section, it then fulfills its purpose of insuring continuity and avoiding a lapse in an office, no matter whether the term is shortened or not. In the case before us the city charter fixes the term, not the constitution. By the charter amendments under consideration it is proposed to fix the term for which the officers concerned shall hold office at two years. If these amendments are adopted then the term will be two years, and if the officers hold it for that length of time and until their successors are duly elected or appointed and qualified the requirements of Sec. 12 will have been met.

Id. at 170-171. Based on the interpretation of Article VII, Section 12 by the Court in this case, this constitutional provision does not preclude the term of an existing public water supply district director from being reduced by approximately two months.

Article VII, Section 13 of the Missouri Constitution provides:

> **Section 13. Limitation on increase of compensation and extension of terms of office.** The compensation of state, county and municipal officers shall not be increased during the term of office; nor shall the term of any officer be extended. [Emphasis added.]

This section precludes the terms of the incumbent directors from being extended for approximately ten months which would occur if the transition to the April election from the June election were made by extending the incumbent directors' terms.

Based on the legal principles discussed above, a public water supply district could make the transition from a June election date to an April election date by having the incumbent directors simply serve a term approximately two months shorter than they would have served except for the change in the election date from June to April. Note that the directors serve staggered terms pursuant to Section 247.060. The terms would remain staggered with each incumbent director serving until his successor takes office approximately two months prior to when the incumbent director's term would have ended except for the change

in the election date from June to April. The election would be held in April and the newly-elected director(s) would take office no later than thirty days after the April election, replacing the director(s) whose terms would have expired after the June election except for the change in the election date. Subsequent elections would occur in April with the director(s) chosen at an April election taking office no later than thirty days after the April election.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

October 19, 1995

OPINION LETTER NO. 181-95

The Honorable Sheila Lumpe
State Representative, District 72
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Lumpe:

This opinion letter is in response to your question asking whether there can be a city park board as authorized by Sections 90.500 through 90.570, RSMo 1994, in a city having no annual property tax for local parks, but having a sales tax for local parks. Your specific question is:

> If a city submits a local parks sales tax initiative to its voters pursuant to H.B. 88, would the city need to maintain some type of a park tax in order to function as an administrative park board as outlined under Section 90.500, RSMo, if the . . . sales tax is collected to the credit of the park fund in lieu of the park tax?

Sections 90.500 through 90.570 authorize certain cities or towns, after a majority approval by the voters therein, to levy an annual property tax for the establishment and maintenance of free public parks in the incorporated city or town, and providing for suitable entertainment therein. Section 90.500.3 provides the property tax collected is to be deposited in the park fund. When a city or town has established and is maintaining public parks pursuant to Sections 90.500 through 90.570, a board of directors (hereinafter the "park board") of nine members is appointed to supervise the parks. Pursuant to Section 90.550, the park board has the exclusive control of the expenditures of all money collected to the credit of the park fund. Section 90.550 provides in part:

> [The directors] shall have the exclusive control of the expenditures of all money collected to the credit of the park fund and of the supervision, improvement, care and custody of said park. All moneys received for such parks shall be deposited in the treasury of said city or town to the credit

> of the park fund and shall be kept separate and apart from the other moneys of such city or town and drawn upon by the proper officers of said city or town upon the properly authenticated vouchers of the park board. "

However, Section 90.510 authorizes the property tax levy to be reduced. Section 90.510 provides:

> 90.510. Public parks, maintenance.--In case of an increase in valuation in any year of the taxable property within any city, or whenever the common council of such city is satisfied that a lower rate will produce ample funds, it may reduce the levy herein provided for by levying a tax for the maintenance of said free public parks which in the judgment of said common council shall be sufficient for the maintenance of said free public parks throughout the year.

Your question basically asks if the park board created under Sections 90.500 through 90.570 continues to exist if no property tax for parks is levied as authorized in such sections.

A property tax levy for parks may not be necessary because of the authority to levy a sales tax for local parks. Conference Committee Substitute No. 2 for Senate Committee Substitute for House Committee Substitute for House Bill No. 88, 88th General Assembly, First Regular Session (1995) (hereinafter "House Bill No. 88") authorizes a city to levy a sales tax for parks. Section 8.1 of House Bill No. 88 provides a municipality may impose a sales tax in an amount not to exceed one-half of one percent, upon voter approval, for local parks or for storm water control or both. Section 8.3 of House Bill No. 88 provides:

> 3. All revenue received by a municipality or county from the tax authorized under the provisions of this section shall be deposited in a special trust fund and shall be used to provide funding for storm water control or for local parks, or both, within such municipality or county.

Section 8.5 of House Bill No. 88 provides in part:

> . . . all expenditures of funds arising from the local parks and storm water control sales tax trust fund shall be by an appropriation act to be enacted by the governing body of each such municipality or county. Expenditures may be made from the fund for any storm water control or local park functions authorized in the ordinance or order adopted by the governing body submitting the tax to the voters.

In your question, you assume that the sales tax revenue is collected to the credit of the park fund. Section 8.3 of House Bill No. 88 provides that the sales tax revenue is to be "deposited in a special trust fund." Section 8.5 of House Bill No. 88 provides that expenditures of the sales tax revenue are to be by an appropriation act of the governing body of the city. Based on the question you pose, we assume the governing body of the city has chosen to appropriate the sales tax revenue from the "special trust fund" established by Section 8.3 of House Bill No. 88 to the "park fund" described in Section 90.550.[1]

Your specific question asks if the park board continues to exist if no property tax for parks is levied. There is no provision in Sections 90.500 through 90.570 that causes the park board to be abolished even if no property tax for parks is levied. Therefore, it is the opinion of this office that a park board created under Sections 90.500 through 90.570, RSMo 1994, continues to exist even if no property tax for parks is levied.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

---

[1]To address the question you pose, we do not need to address, and do not address, whether the governing body of the city could expend the sales tax revenue for park purposes and not transfer the sales tax revenue to the park fund.

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

December 22, 1995

OPINION LETTER NO. 212-95

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of sixteen (16) initiative petitions relating to the amendment of certain sections in Chapter 290, RSMo, which sections pertain to the minimum wage rate. A copy of each of the sixteen (16) initiative petitions which you submitted to this office on December 12, 1995, is attached for reference.

We conclude that each of the sixteen (16) initiative petitions must be rejected as to form, because each fails to follow the statutorily-prescribed form set forth in Section 116.040, RSMo 1994. We note the following deviations from the statutory form: (1) each of the sixteen (16) initiative petition forms requests the proposed law be submitted to the voters for the "City of St. Louis, Missouri" while the statutory form states the proposed law shall be submitted to the voters of the "state of Missouri" and (2) each of the sixteen (16) initiative petition forms contains a column for "phone" while the statutory form does not provide for such a column.

Because of our rejection of the form of the petitions for the reasons stated above, we have not reviewed the petitions to determine if additional deficiencies exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosures

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

December 27, 1995

OPINION LETTER NO. 229-95

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the enactment of a new Section 578.050, RSMo, addressing exhibitions of fighting or wrestling involving animals or birds. A copy of the initiative petition which you submitted to this office on December 21, 1995, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure